

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF WYOMING

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

DOCKET NO. 12-CR-216-F

5 vs.

CHEYENNE, WYOMING

6 AJAY JARIWALA,

April 29, 2013

9:00 a.m.

7 Defendant.

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9 TRANSCRIPT OF HEARING PROCEEDINGS  
10 ALL PENDING MOTIONS

11 BEFORE THE HONORABLE NANCY D. FREUDENTHAL  
12 CHIEF UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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24 Proceedings recorded by mechanical stenography, transcript  
produced with computer.

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1 (Proceedings commenced 9:00 a.m., April 29, 2013.)

2 THE CLERK: In criminal matter Case  
3 No. 12-CR-216-2-F, United States of America versus Ajay  
4 Jariwala, set today for a motion hearing.

5 Counsel, please state your appearances.

6 MR. ANDERSON: Jim Anderson and Bob Murray on behalf  
7 of the United States. Also seated at counsel table is Paul  
8 Claflin, Special Agent with ATF, and we will be designating him  
9 our case agent for purposes of Rule 615.

10 THE COURT: Good morning.

11 MR. STEINBERG: Morning, Judge. My name is Harvey  
12 Steinberg. I appear with and on behalf of the Defendant Ajay  
13 Jariwala who is present in court standing right now. And also  
14 present at counsel table standing to my right is Mr. Ariel  
15 Benjamin and Mr. Matt Giacomini, both lawyers from my office.

16 THE COURT: As announced by the courtroom deputy, we  
17 have various motions filed by the defendant.

18 Mr. Steinberg, how would you like to proceed? I don't  
19 know if you wish to argue some or all of the motions, if you  
20 wanted to split time with your colleagues, but I will leave  
21 that to you.

22 MR. STEINBERG: Perhaps I could help facilitate  
23 resolution of most of the motions that are time consuming.  
24 One, the defense had filed motions to suppress statements. It  
25 is our position based on review of the videotapes as well as

1 the audiotapes that we will withdraw that motion.

2 We had also filed a motion to suppress fruits of a  
3 search warrant dealing with search of cell phone that was taken  
4 from the defendant at the time of his arrest. The Government  
5 has indicated that they don't intend to introduce any of the  
6 fruits that -- of that search during the course and scope of  
7 their case in chief, and therefore, that motion, I believe, is  
8 moot.

9 THE COURT: Is that correct?

10 MR. ANDERSON: That's correct, Your Honor, the United  
11 States, as we indicated in our response to the Court, found  
12 little of evidentiary value on the cell phone. I have  
13 represented to defense counsel that, trials being what they  
14 are, I can't foresee the future. I don't anticipate using any  
15 of that information off the cell phone during our case in  
16 chief. We are continuing to analyze it. Should something come  
17 up, I will certainly notify the defense, but at this point we  
18 don't anticipate using any of that material off the phone  
19 during our case in chief.

20 And I can't anticipate what might happen during  
21 cross-examination of any defense witness, but at this point we  
22 think that Mr. Steinberg -- what Mr. Steinberg has represented  
23 is substantially correct.

24 THE COURT: All right. Thank you, Mr. Anderson.

25 MR. ANDERSON: It is correct.

1 MR. STEINBERG: Judge, we had filed a motion for  
2 disclosure of confidential informant, but I don't think there  
3 will be anything that will come of that. I don't think the  
4 Government intends to call that person, or if they do, then  
5 there's no issue as well.

6 THE COURT: All right. So do you consider that mooted  
7 or withdrawn, Mr. Steinberg?

8 MR. STEINBERG: Mooted.

9 THE COURT: All right. Thank you.

10 MR. STEINBERG: And now if I might approach the  
11 lectern.

12 THE COURT: Please do.

13 MR. STEINBERG: Judge, still pending is the motion to  
14 continue. And I had advised counsel that -- we had filed a  
15 document in support of our motion to continue and we had done  
16 that under seal. I had advised him prior to the filing of that  
17 document that we intended to do that, and he was gracious  
18 enough to say he did not object, and I confirmed with him today  
19 that we had done that.

20 I am in an uncomfortable position and I will tell you  
21 why. I have been doing this perhaps a lot longer than I should  
22 and maybe that's part of the problem. I can honestly say in  
23 the 35 years plus of my practice I have never tried a case  
24 where I haven't read every bit of discovery. I think every  
25 defendant charged with a crime, especially a situation where

1 he's looking at the type of mandatory sentence that this  
2 defendant is looking at, he is entitled to, pursuant to his  
3 Sixth Amendment rights, not only zealous but prepared counsel.

4 And there is no way I could have sifted through, let  
5 alone digested, I'm guessing close to 70,000 pages of discovery  
6 as well as multiple hours of videotapes and audiotapes in the  
7 time frame that we have had those. I think that we received  
8 the bulk of discovery I want to say on or about February 19th,  
9 Counsel correct me, and then there's been other discovery  
10 that's come in during the course of preparations.

11 And there's just no way any lawyer, any lawyer, and I  
12 want to say that clearly, could have adequately prepared this  
13 case in the short time frame. There's no way. I was doing  
14 math the other day, and I think that if we did 240 pages a day,  
15 which is difficult reading in terms of whenever you're reading  
16 discovery for the first time, it is more difficult than if you  
17 read it the second or third times, and most lawyers like to at  
18 least go through discovery several times because the first time  
19 you try to get an overview and the second time you look at it  
20 with a more, if you will -- I hate to use this term --  
21 jaundiced eye in terms of preparation. There's no way anyone  
22 could have done it in the short time frame.

23 And that assumes one doesn't have other commitments.  
24 And I would suggest to you if I didn't have other commitments I  
25 probably wouldn't have been the right choice of counsel for

1 this type of case. This is a complicated case in terms of the  
2 origin of the fire from our perspective. There's investigation  
3 that needs to be done, and there's overall preparation.

4 I don't want you to think that the defense has been  
5 dilatory in its efforts. Because of the impending trial that  
6 was set, we jumped on this immediately, and we have dedicated,  
7 perhaps to the detriment of other clients, amounts of time to  
8 try to prepare for this. And I am simply not ready. And  
9 again, I'm going to reiterate this: I have never been in this  
10 situation where I had to tell the Court that I am not prepared  
11 for a trial. But I want the record to be clear, if this  
12 proceeds to trial on May 13th, I am of the humble opinion that  
13 it will be a sham and farce from the defense's side because the  
14 defendant will be represented by counsel who did not have  
15 adequate time to prepare, not through lack of effort by  
16 counsel, but simply the constraints of the time frame that was  
17 placed upon counsel and this defense team.

18 And I understand there are competing interests, Judge,  
19 and I don't mean to suggest there aren't competing interests.  
20 And I know that this Court and the public has an interest in  
21 making sure that cases, if you will, are tried in an  
22 expeditious fashion. But I think the Constitution trumps, and  
23 the Sixth Amendment to this Constitution that we live under  
24 guarantees a defendant have effective counsel, and, at the  
25 minimum, effective counsel is defined as prepared counsel.

1           And as I said, I cannot be prepared and no lawyer, no  
2   lawyer who is facing this kind of situation -- excuse me --  
3   this kind of trial, could be adequately prepared under the  
4   circumstances.

5           I have nothing further.

6           THE COURT: Thank you.

7           Mr. Anderson.

8           MR. ANDERSON: Briefly in response, Your Honor, the  
9   discovery in this matter is voluminous. There's a lot of it.  
10   I think at last count there was about 40 to 45 gigabytes,  
11   perhaps a little more, of discovery. But a lot of that, Judge,  
12   when you start talking about digital size, that really is quite  
13   meaningless, because, for instance, your typical jpeg file,  
14   photograph, takes up an awful lot of space. To say there's 80  
15   or 70,000 pages of documents is really misleading as well.

16           I am not accusing Mr. Steinberg of trying to mislead  
17   the Court, but I think that when you talk about 70 or 80,000  
18   pages, many of those pages will be scanned pages of bankruptcy  
19   pleadings in New Jersey that have absolutely nothing to do with  
20   this case at all.

21           The essence of this case is contained in the 500-plus  
22   pages of the ATF report that was provided to the defense on  
23   February -- as Mr. Steinberg says, was received by the defense,  
24   shipped out of our office on February 15th and received on  
25   February 19th.



1           In addition to that, all of those 70 or 80,000 pages  
2   are not text documents. They are scanned, canceled checks.  
3   They are photographs. They are transcripts, double-spaced  
4   transcripts. Quite frankly, Judge, Mr. Murray came onto this  
5   case about six weeks ago and, again, not having the same  
6   responsibilities and obligations as defense counsel, and we  
7   understand that, but certainly will be prepared and ready to go  
8   to trial. We're certainly ready to go to trial. We have  
9   submitted our response to the motions to continue.

10           I'm at a disadvantage, obviously, at this point not  
11   understanding or not knowing what's recently been submitted to  
12   the Court, but we stand by our previous submittals. We believe  
13   that this is a case that at its essence is about a man who  
14   hired another man to burn down a building. Origin and cause is  
15   not complicated. We have a man that's going to come into this  
16   courtroom and testify: I had gasoline. I poured the gasoline.  
17   I lit the gasoline.

18           The ATF reports back up that testimony. The ATF  
19   scientific reports which are very short, very simple say debris  
20   taken from certain areas within the -- from the fire in fact  
21   tested positive for gasoline confirming the testimony of the  
22   arsonist.

23           Again, origin and cause is not the issue here. The  
24   issue here is whether or not a jury will believe Mr. Robert  
25   Rodriguez when he testifies. That's the -- that's the kernel

1 and the essence of this particular case is the individual who  
2 says he was hired by Mr. Jariwala going to be believable to the  
3 jury.

4 So with that in mind, Judge, I think that we should be  
5 going forward. This is a case -- there is no mystery to the  
6 defense two years ago when Mr. Steinberg was first retained  
7 that this was an arson investigation. Mr. Jariwala knows that  
8 he was the subject of suspicion from early on. Mr. Jariwala  
9 has been sued by the insurance company saying, "We are not  
10 going to pay for the claim that you and your business  
11 associates have submitted in regards to this fire."

12 So to say that we're unprepared I think really misses  
13 the mark. And again, the 60,000, 70,000, 80,000 pages of  
14 discovery in this matter, as the Government has repeatedly  
15 submitted to the Court in its responses, the essence of this  
16 case is in the ATF report that consists of about 500-plus  
17 pages.

18 It is the road map and the guide to this case. And  
19 certainly, while I can well understand defense -- the defense's  
20 desire to review all of the documents, a great many of those  
21 documents that were submitted that were gathered in the course  
22 of this investigation simply will not be used. We intend, Your  
23 Honor, to give by the beginning of next week to defense counsel  
24 our witness list. We have already provided a witness list in  
25 this particular matter. We provided that on February 15th of

1 2013.

2 We're going to whittle that witness list down to about  
3 25 witnesses. We will also provide to defense prior to trial  
4 next week sometime, as soon as we have finalized it, our  
5 exhibit list. We want to be as -- as defense friendly as we  
6 can in providing -- in trying this case as far as giving the  
7 defense what we believe they need or that they will need from  
8 us in regards to this particular case.

9 I would be happy to answer any question that the Court  
10 might have.

11 THE COURT: All right. Thank you.

12 MR. STEINBERG: May I briefly reply, Judge?

13 THE COURT: I have a couple of questions first.

14 MR. STEINBERG: I'm sorry.

15 THE COURT: Thank you. In dealing with the U.S.  
16 Attorney's office in this district as frequently in drug cases  
17 where there's much more evidence than in this case, the U.S.  
18 Attorney's Office has in some instances identified, as you have  
19 today, the focus of the Government's case in terms of what you  
20 think to be inculpatory evidence, the 500 pages that provides  
21 the overview and road map and the report by the ATF.

22 What other efforts has the U.S. Attorney done or  
23 anticipates doing to target both inculpatory and exculpatory  
24 evidence that's in the voluminous discovery that's been  
25 provided?

1 MR. ANDERSON: Early on, probably within the first  
2 week of -- after the arraignment in this particular matter, I  
3 think it was either on Friday or a Saturday, we had lengthy  
4 discussion, probably an hour discussion with the defense,  
5 specifically with Mr. Giacomini, outlining our case and what we  
6 believed were the significant pieces of evidence and the  
7 significant documents within the discovery that we have  
8 provided to the defense that particular attention ought be paid  
9 attention to.

10 We have really literally withheld nothing. If  
11 anything, I think the Government could be faulted here. The  
12 only reason that we could be faulted is perhaps we have  
13 provided too much. But again, rather than be accused of  
14 withholding anything that might be -- that might be in our  
15 possession, we tried to turn over everything we possibly can.

16 Now, we have not -- I have not identified anything,  
17 Your Honor, within the evidence that has been turned over to  
18 the defense anything that I would consider to be Brady material  
19 indicating someone else has committed this crime other than  
20 early on in the investigation several notations were made about  
21 other possible suspects. Those reports have, indeed -- they  
22 are part of the ATF packet that's been turned over to the  
23 defense.

24 So I guess what I'm -- a lengthy response to your  
25 simple question is we have tried to discuss with the defense

1 those portions of the evidence that have been turned over to  
2 them that we believe are important and significant. We have  
3 certainly not -- while we haven't said this is an exculpatory  
4 piece of evidence, the reason we haven't done that is because  
5 we don't believe much of what we've turned over qualifies -- in  
6 fact, we don't believe anything qualifies as Brady material at  
7 this point, Judge.

8 THE COURT: Thank you.

9 MR. ANDERSON: Anything else, Judge?

10 THE COURT: No, unless there's something that you wish  
11 to say.

12 MR. ANDERSON: No, Judge.

13 THE COURT: Mr. Steinberg.

14 MR. STEINBERG: Judge, first I think it was important  
15 for you to know I was never involved in any of the civil cases,  
16 never appeared, never advised anyone and was not part and  
17 parcel of anything that happened in the civil case.

18 Two, this is just an example. The Government  
19 obviously has a different view -- and I don't expect them to  
20 have the same view as the defense because that's not their  
21 role.

22 But I anticipate that the Government at the time of  
23 trial will make, if you will, a big to-do, to use a term of  
24 art, about the amount of insurance that was on this premises.  
25 And if you would just limit yourself to the 500 pages that the

1 Government says we should limit ourselves to, that becomes a  
2 big deal and you say to yourself, my goodness, why was there  
3 this much insurance on this property.

4 But if you take the time to read the discovery, you  
5 come across gems like this, which was an investigation done as  
6 part of this by the New York office. And I don't know if the  
7 Court's aware of this, but there was an Assistant U.S. Attorney  
8 by the name of Sarah Coyne, C-O-Y-N-E, out of the Eastern  
9 District of New York who issued subpoenas.

10 And lo and behold, prior to Mr. Jariwala's involvement  
11 or knowledge of this property, there was a \$12 million  
12 insurance policy that was taken out to the benefit of Fidelity  
13 Bank of Florida and that appears, based on this document, to be  
14 in about 2009. And the period, according to this document, of  
15 coverage is December 21st, 2009 through March 21st, 2010. As  
16 you know, the fire allegedly occurred in September of 2010.

17 The document goes on to say the coverage totals over  
18 12 million. The contact information for the NIA Group, which  
19 is the insurer, is in Somerset, New Jersey, and then it has the  
20 Fidelity Bank of Florida.

21 Well, this to me is important material because it  
22 seems to belie the suggestion that the defendant went out and  
23 got this overwhelming insurance policy in anticipation of  
24 burning it down when, in fact, prior to his participation in  
25 this particular purchase there was a \$12 million insurance

1 policy already in place which I had no idea about until we came  
2 across this document. And this is the kind of gem, if you  
3 will, that's important.

4 So now we have to figure out how to get subpoenas out  
5 to NIA Group in New Jersey so we can get copies. And then it  
6 appears that the entity that took out the insurance policy was  
7 CJM. Now, that will come up in the trial because they're going  
8 to suggest CJM was the defendant's alter ego and that he was  
9 CJM. Well, now we know he wasn't CJM, because CJM before his  
10 involvement took out a policy for \$12 million. Now, I can't  
11 get ready for the case because of things like this.

12 And when the Government says they're going to be,  
13 quote, defense friendly, that's the tempest in the teapot. And  
14 what I mean by that is the fact that -- I don't want their  
15 friendship. They're nice people, but I'm not here to be their  
16 friend. I'm here to represent and defend my client without the  
17 friendship of the Government. This is a system that is geared  
18 towards not this kind of, quote, friendship where the defense  
19 has to rely on the very people who are trying to lock him up  
20 for 15-plus years. And we're supposed to look to them for  
21 guidance? I don't think so.

22 And this is just one example, Judge. And how many  
23 others are there that we might be able to come up with? The  
24 Government, of course, just wants to limit this and say here's  
25 this case; just focus on this. And the defense says well, wait

1 a second. It is more than that. And it is important to know  
2 the history.

3 So this is but one example that we've come across.  
4 And that's my concern. If you force me to go to trial, I will  
5 not be prepared and I will not be effective. And someone will  
6 determine, who is much brighter than me, if, in fact, this was  
7 a fair trial. Thank you.

8 THE COURT: Thank you. Anything further?

9 MR. STEINBERG: No.

10 THE COURT: Anything further?

11 MR. ANDERSON: Government has nothing further.

12 Thanks, Judge.

13 THE COURT: Thank you.

14 Well, just on some housekeeping matters before we move  
15 to what we have spent the lion's share of the time this morning  
16 addressing, there are a number of motions that are associated  
17 with disclosure which are within the Court's order governing  
18 this trial. We haven't addressed those. We have addressed  
19 three motions and then the motion to continue.

20 But insofar as the defendant has motions pending  
21 relating to the release or disclosure of information or  
22 materials that are already addressed and provided for within  
23 the Court's order, discovery order on this case, those motions  
24 will be granted in part and denied in part.

25 It will be granted to the extent that those materials



1 have been produced or that they're required to be produced  
2 pursuant to the Court's discovery order. And to the extent the  
3 motion is seeking relief in excess of what's -- what the  
4 Court's provided in the discovery order, those motions are  
5 denied.

6 On the motion to suppress statements, that motion for  
7 the defendant's comments is withdrawn.

8 On the motion to suppress the fruits of the search  
9 warrant, that motion at this time is considered moot. If  
10 during the course of trial something surfaces, the Court will  
11 address it at that time.

12 Relating to the motion as to the confidential  
13 informant, the identity of informants, the Court again  
14 considers that motion mooted.

15 Turning now to the motion to continue, the Court  
16 understands that that motion is sought under the ends of  
17 justice provision in the Speedy Trial Act. It's -- it's the  
18 Court's conclusion that -- well, the test and the requirement  
19 is reasonable time for effective preparation. This case has  
20 been subject to one continuance already. The Court is not of  
21 the opinion that effective counsel requires counsel to read  
22 every bit of discovery. If that were the test -- there are  
23 many, many cases in this district and other districts which  
24 entail the disclosure of vast amounts of data characterized as  
25 gigabytes or whatever. If this is -- if this is the standard,

1 then no case would go to trial within the Speedy Trial Act or  
2 close to the Speedy Trial Act, and that's not the Court's view  
3 of what Congress intended when they passed that law and  
4 afforded specific rights to the defendant as well as to the  
5 public on the Speedy Trial.

6 I read through the ex parte motion and conclude that  
7 even considering the ex parte motion and the disclosure of  
8 information which can be characterized as strategic that  
9 particularly as to efforts to retain experts there's really no  
10 clear indication in that motion and the other prior motion  
11 before the ex parte motion was filed that those experts would  
12 actually assist the defendant's case.

13 It's -- it's the Court's decision to deny the second  
14 motion for reconsideration of the original motion to continue.  
15 The Court is of the conclusion that the time that has elapsed,  
16 both following the defense -- defendant's indictment and  
17 arraignment and preceding that that there's been reasonable  
18 time for effective preparation in this case. Again, we see  
19 drug cases, white-collar crime cases, child pornography cases  
20 with vast amounts of evidence disclosed by the Government.

21 I have never had a defense attorney make any  
22 representation that they need to read every bit of discovery.  
23 It is the Court's view that the defendant -- the Government has  
24 provided, both through meetings and otherwise, the outline of  
25 its case. The defendant has an understanding of his

1 relationship to this case, the insurance policies and the  
2 accusations and evidence relating to that.

3 This case from my perspective is a case where the  
4 Government really is called to prove beyond a reasonable doubt  
5 who, what, when, where and how. Juries certainly are  
6 interested in the why component which appears to be the search  
7 through the documents that the defense is engaged in at this  
8 time.

9 And so with that, the case will stay on track. I  
10 would note, and this was covered in the first, if not the  
11 second, order relating to defense request to continue, that at  
12 the time of the detention hearing I was unambiguously clear  
13 that this case was moving to trial and that it would not be  
14 unnecessarily delayed. We've got two defendants on this  
15 indictment that are waiting in jail -- in a jail setting where  
16 very little is available to them. They have -- it is  
17 reasonable to understand that their sentencing will be deferred  
18 pending the trial in this case, and those -- those defendants  
19 are entitled to a timely disposition of their case without  
20 unreasonable periods of time associated with a defense  
21 strategy.

22 It is also my observation, and perhaps this is  
23 unfounded or unreasonable, and if so, I apologize in advance,  
24 but it is my observation that were the defendant now detained  
25 this case would be moving to trial without motions to continue.

1           Is there anything else that requires the Court's  
2   attention?

3           MR. ANDERSON: Judge, there was one motion that we  
4   haven't addressed. It is concerning coconspirator  
5   statements --

6           THE COURT: Oh, yes, thank you.

7           MR. ANDERSON: -- and Bruton. There's not going to be  
8   any Bruton issues here. The Court had previously ruled on  
9   another James hearing-type motion. The Government asserted law  
10   of case as our response to the motion made by -- by Mr.  
11   Jariwala.

12          THE COURT: Yes. Thank you for reminding me. It is  
13   my intent to deny that motion. My experience with James  
14   hearings has not been particularly positive. It seems as  
15   though we spend our time at the James hearing and also at trial  
16   and it does not -- it is not particularly efficient.

17          Any other matters that I might have forgotten? And we  
18   will be entering an order -- a written order in this case.

19          MR. ANDERSON: No, Your Honor. Thank you.

20          MR. STEINBERG: Does the Court --

21          THE COURT: Mr. Steinberg.

22          MR. STEINBERG: Does the Court require that the  
23   coconspirator statements be denoted and provided to the defense  
24   in advance of the trial so that at least we will know what  
25   statements the Government intends to seek to introduce under

1 that exception?

2 THE COURT: I -- I cannot recall precisely what falls  
3 within the scope of the discovery order.

4 Mr. Anderson, what is your intent regarding that? I  
5 guess the --

6 MR. ANDERSON: We will --

7 THE COURT: -- the question is a summarization of the  
8 statement from the Government.

9 MR. ANDERSON: That is not required under your prior  
10 discovery order of February 15th of 2013. We have provided  
11 either transcripts or recordings or reports of interviews of  
12 all of the coconspirators in this matter. In addition, there's  
13 one other witness that will be testifying that may very well  
14 give us testimony that would qualify under the coconspirator  
15 exception.

16 But we have provided by way of discovery all of the  
17 statements or the substance of the statements to the defense.  
18 They're easily ascertainable from those reports. They will be  
19 statements that have been made by Mr. Trevino, Mr. Rodriguez,  
20 Brenda Guerrero is the other party that comes to mind that may  
21 have some coconspirator-type statement testimony in this  
22 particular matter, Judge.

23 THE COURT: Have the transcripts of the change of plea  
24 pleadings been provided?

25 MR. ANDERSON: We have -- we did not order those up

1 from the court reporter, Your Honor. We certainly -- we have  
2 not ordered those up, Judge, no.

3 THE COURT: All right.

4 MR. STEINBERG: Judge, my concern is, again, here we  
5 go, oh, it is all in the discovery. The point is this Court is  
6 required under the law to make findings before the introduction  
7 of statements at some point in time. They don't just come in.  
8 The Court has to make a finding. But the easiest way to do  
9 that is at least tell both the Court and the defense, here are  
10 the statements that we're seeking to introduce under this  
11 exception so we know what they are and be specific about them  
12 because to say, well, we're going to seek to introduce  
13 everything is disingenuous at best so one would think if not  
14 for the defense convenience but for the convenience of the  
15 Court so the Court can make the appropriate findings, as it is  
16 required to do under the case law, that we identify the  
17 statements.

18 MR. ANDERSON: We will certainly identify any of those  
19 types of -- well, those type of statements, again, are readily  
20 identifiable. We are -- we understand the foundation  
21 necessary, and we will provide that foundation. We may be  
22 offering some statements provisionally, but, Judge, we  
23 understand what 801 requires. We have provided to the defense  
24 the sum and substance of coconspirator statements.

25 There are just a few. There are not many. Again, we

1 think that we have satisfied our obligation per your court  
2 order in addition to existing law.

3 THE COURT: Well, it is not my inclination to require  
4 the Government to make essentially a written James submission.  
5 I certainly know, as the attorneys do, what the admissibility  
6 standard is. To the extent that there are statements that the  
7 defense believes are inadmissible hearsay and do not fall under  
8 the coconspirator statement exclusion from hearsay, the  
9 defendant counsel may object at the time those statements are  
10 sought to be elicited from the witness, and we can handle it in  
11 that fashion.

12 In the past we have handled it by -- by conditional  
13 admission and then a later determination that the elements  
14 either have or have not been made with a limiting instruction,  
15 if need be.

16 Anything further?

17 MR. ANDERSON: Not on behalf of the United States.  
18 Thanks, Judge.

19 MR. STEINBERG: No, thanks.

20 THE COURT: Thank you. I appreciate your time today.  
21 Thank you, gentlemen.

22 If you have any questions about the technology, please  
23 contact Abby and she will make herself available. As long as  
24 I'm not in this courtroom, you can come in. And certainly the  
25 U.S. Attorney's Office is very proficient, but if the defense

1 team needs access to the courtroom to gain a level of  
2 familiarity and comfort with the use of the technology by the  
3 attorneys or by witnesses, feel free to catch Abby and she will  
4 walk through that with you and you can experiment with the  
5 smart screens and gain a level of comfort.

6 We will be doing an overview the day of trial as to  
7 the Court's practices. There's nothing really surprising  
8 concerning the Court's practices. Sometimes there are  
9 questions about where attorneys stand and the small podium and  
10 the big podium and all that. I would -- probably the most  
11 repeated comment by jurors made in -- following trials, both  
12 civil and criminal, is that jurors have a hard time hearing  
13 witnesses and the attorneys themselves, and so I will use this  
14 brief time now to just remind counsel to be conscientious about  
15 where you are in relation to the microphone because these are  
16 significant -- trials are significant and it is usually  
17 problematic if the impaneled jury can't hear the attorney or  
18 the witness.

19 And so, again, feel free to talk to Abby about the  
20 technology, about any questions that you have, about matters  
21 that surface during your experience as trial lawyers because  
22 she sits through all of those final pretrial conferences and  
23 sort of has a -- she has a -- she's better than I am in terms  
24 of remembering what needs to be covered.

25 MR. ANDERSON: Couple of questions, Judge. 9:00 to



1 5:00 will be the court hours for the trial or 8:30 to 5:00?

2 THE COURT: It may be 8:30 because Mr. Jariwala is not  
3 detained. Frequently we make it 9:00 in order to get the jury  
4 in and transport people that are detained. I guess I would be  
5 happy to hear input on the court hours for the trial in this  
6 case, if you have any preference.

7 The morning time, whether it is 8:00 to 8:30 or 8:00  
8 to 9:00 during the course of trial is reserved for attorneys to  
9 come in. You don't need an appointment if you have issues. If  
10 you anticipate a problem with a witness or a fight over  
11 documents, I like to hear about those before trial starts or  
12 during the noon recess or whatever.

13 Any preference on your part in terms of the time of  
14 trial? And the first -- the first day we won't begin that  
15 until 10:00, but the attorneys are asked to report at 8:00.

16 MR. ANDERSON: I take it, then, the Court -- you have  
17 anticipated my next question. If we file motions in limine, I  
18 take it we would take them up the morning that trial commences?

19 THE COURT: Yes.

20 MR. ANDERSON: And in regards to hours, Judge, I have  
21 never done this, and I have not talked with anyone on my team  
22 about this, but I'm going to throw it out for consideration.  
23 The courtroom deputy is looking at me like uh-oh. I was going  
24 to suggest, Judge, that the Court consider an 8:00 to 2:00, a  
25 break maybe at 10:00, 10:30 and maybe another break at 12:00,

1 12:30 and go straight through, then we have three hours in the  
2 afternoon to prepare for the next day. I throw that out only  
3 as a suggestion. I have never tried that. I heard that those  
4 type of hours were being maintained by a court in another  
5 district and the attorneys seemed to like it pretty well.

6 I don't know what it would be like here where we have  
7 jurors coming from Wheatland and or Torrington. Perhaps that  
8 is not practical.

9 THE COURT: Well, I, too, have heard those  
10 recommendations at judge conferences. I came back and talked  
11 to chambers staff and the courtroom deputy about that and the  
12 conclusion was that that would significantly shorten our trial  
13 time because I'm very conscientious about keeping the trial  
14 going and not exceeding the time given for breaks so I have  
15 more on-bench time than under the old system.

16 So we talked about that and basically abandoned it  
17 concluding that it would unnecessarily limit the trial time.

18 MR. ANDERSON: I threw it out as a mere suggestion,  
19 Judge. I'm certainly not -- you tell us when to be here, we  
20 will be here.

21 THE COURT: Well, that first day I don't mean to catch  
22 anyone flat-footed by talking about trial matters today. I  
23 appreciate your bringing the trial days up. But we can address  
24 that on that first day when we will have a couple days while  
25 the venire is oriented and gets into the courtroom.

1 I am anticipating calling many more prospective jurors  
2 because of the potential that jurors have read or heard  
3 something about this case that jurors might represent would be  
4 hard to put out of their mind. And so I think we have more of  
5 a potential for problems in that area.

6 Anything else?

7 MR. STEINBERG: Just want to say for the record in  
8 response to the Court's colloquy, the motion would have been  
9 made regardless of Mr. Jariwala's status, had he been detained  
10 or not, so I want that to be absolutely clear. Thank you.

11 THE COURT: Anything further?

12 MR. ANDERSON: Not on behalf of the United States.

13 THE COURT: Mr. Steinberg.

14 MR. STEINBERG: No.

15 THE COURT: Thank you. Thank you again for your time  
16 this morning. We will stand in recess until call.

17 (Proceedings concluded 9:50 a.m., April 29, 2013.)

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## C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Merit Reporter and Federal Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 28th day of October, 2013.

*/s/ Janet Davis*

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JANET DAVIS  
United States Court Reporter  
Registered Merit Reporter  
Federal Certified Realtime Reporter